

**To:** Freedlander, Mark E.[MFreedlander@mcguirewoods.com]; Kaiser, Charles J.[CJKaiser@pgka.com]  
**Cc:** Roeschenthaler, Michael J.[MRoeschenthaler@mcguirewoods.com]; jeffrey.Sands@usdoj.gov[jeffrey.Sands@usdoj.gov]; Alan.Tenenbaum@usdoj.gov[Alan.Tenenbaum@usdoj.gov]; Kaiser, Jeff[jeffkaiser@pgka.com]; Schuster, Scott E.[SSchuster@mcguirewoods.com]; Alter, Jason P.[jalter@mcguirewoods.com]; sthompson@barth-thompson.com[sthompson@barth-thompson.com]; Call, Gary (USAVVS)[Gary.Call@usdoj.gov]; Eiseman, Robin[Eiseman.Robin@epa.gov]; Gray, Heather[Gray.Heather@epa.gov]  
**From:** Van Eaton, Josh (ENRD)  
**Sent:** Thur 2/20/2014 3:49:32 PM  
**Subject:** RE: Freedom Industries

Counsel-

Given that the hearing is scheduled for tomorrow, please advise us by no later than 3pm today whether the Debtor and Lender will agree to include the language proposed by the United States in the email below for inclusion in the Final Order on financing.

Thank you,

**Joshua H. Van Eaton**

**Trial Attorney**

U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section

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**Overnight:**

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**From:** Freedlander, Mark E. [mailto:MFreedlander@mcguirewoods.com]

**Sent:** Monday, February 10, 2014 1:44 PM

**To:** Van Eaton, Josh (ENRD)

**Cc:** Kaiser, Charles J.; Roeschenthaler, Michael J.; Sands, Jeffrey (ENRD); Tenenbaum, Alan (ENRD); Kaiser, Jeff; Schuster, Scott E.; Alter, Jason P.; sthompson@barth-thompson.com; Call, Gary (USAWVS); Eiseman.Robin@epa.gov; Gray.Heather@epa.gov

**Subject:** Re: Freedom Industries

Subject to court protocol for the venue, YES. MEF

Mark E. Freedlander

McGuireWoods LLP

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On Feb 10, 2014, at 1:42 PM, "Van Eaton, Josh (ENRD)" <[Josh.Van.Eaton@usdoj.gov](mailto:Josh.Van.Eaton@usdoj.gov)> wrote:

Thank you for the update. Can you agree to extend the objection deadline until sometime after we have had a chance to review the proposed order?

**From:** Freedlander, Mark E. [<mailto:MFreedlander@mcguirewoods.com>]

**Sent:** Monday, February 10, 2014 1:03 PM

**To:** Van Eaton, Josh (ENRD)

**Cc:** Kaiser, Charles J.; Roeschenthaler, Michael J.; Sands, Jeffrey (ENRD); Tenenbaum, Alan (ENRD); Kaiser, Jeff; Schuster, Scott E.; Alter, Jason P.; [sthompson@barth-thompson.com](mailto:sthompson@barth-thompson.com); Call, Gary (USAWVS); [Eiseman.Robin@epa.gov](mailto:Eiseman.Robin@epa.gov); [Gray.Heather@epa.gov](mailto:Gray.Heather@epa.gov)

**Subject:** Re: Freedom Industries

Not there yet. Will not be circulating order for at least 24 hours or so. Thank you. MEF

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On Feb 10, 2014, at 12:54 PM, "Van Eaton, Josh (ENRD)" <[Josh.Van.Eaton@usdoj.gov](mailto:Josh.Van.Eaton@usdoj.gov)> wrote:

Counsel-

Please advise whether the Debtor and Lender agree to include the language proposed by the United States in the email below for inclusion in the Final Order on financing.

We are available to discuss the language if it would be helpful. Is there a proposed Final Order yet that we can review?

Thank you,

Josh Van Eaton

**Joshua H. Van Eaton**

**Trial Attorney**

U.S. Department of Justice

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**From:** Kaiser, Charles J. [<mailto:CJKaiser@pgka.com>]  
**Sent:** Thursday, February 06, 2014 3:26 PM  
**To:** Roeschenthaler, Michael J.; Sands, Jeffrey (ENRD); Tenenbaum, Alan (ENRD); Kaiser, Jeff; Freedlander, Mark E.; Schuster, Scott E.; Alter, Jason P.; '[sthompson@barth-thompson.com](mailto:sthompson@barth-thompson.com)'  
**Cc:** Van Eaton, Josh (ENRD); Call, Gary (USAWVS); '[Eiseman.Robin@epa.gov](mailto:Eiseman.Robin@epa.gov)'; '[Gray.Heather@epa.gov](mailto:Gray.Heather@epa.gov)'  
**Subject:** RE: Freedom Industries

5 pm EST on Monday is acceptable to the DIP Lender. CJK

**From:** Roeschenthaler, Michael J. [<mailto:MRoeschenthaler@mcguirewoods.com>]  
**Sent:** Thursday, February 06, 2014 3:06 PM  
**To:** Sands, Jeffrey (ENRD); Kaiser, Charles J.; Tenenbaum, Alan (ENRD); Kaiser, Jeff; Freedlander, Mark E.; Schuster, Scott E.; Alter, Jason P.; '[sthompson@barth-thompson.com](mailto:sthompson@barth-thompson.com)'  
**Cc:** Van Eaton, Josh (ENRD); Call, Gary (USAWVS); '[Eiseman.Robin@epa.gov](mailto:Eiseman.Robin@epa.gov)'; '[Gray.Heather@epa.gov](mailto:Gray.Heather@epa.gov)'  
**Subject:** RE: Freedom Industries

Let's take it to Monday.

**From:** Sands, Jeffrey (ENRD) [mailto:Jeffrey.Sands@usdoj.gov]  
**Sent:** Thursday, February 06, 2014 2:52 PM  
**To:** Roeschenthaler, Michael J.; Kaiser, Charles J.; Tenenbaum, Alan (ENRD); Kaiser, Jeff; Freedlander, Mark E.; Schuster, Scott E.; Alter, Jason P.; 'sthompson@barth-thompson.com'  
**Cc:** Van Eaton, Josh (ENRD); Call, Gary (USAWVS); 'Eiseman.Robin@epa.gov'; 'Gray.Heather@epa.gov'  
**Subject:** RE: Freedom Industries

Thanks, Mike. Is the extension through 5pm on Friday (2/7/14) or later?

We look forward to hearing from you soon.

Regards,

Jeff

**Jeffrey K. Sands**  
Senior Attorney  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Enforcement Section  
(202) 514-3908  
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**From:** Roeschenthaler, Michael J. [<mailto:MRoeschenthaler@mcguirewoods.com>]  
**Sent:** Thursday, February 06, 2014 2:45 PM  
**To:** Kaiser, Charles J.; Sands, Jeffrey (ENRD); Tenenbaum, Alan (ENRD); Kaiser, Jeff; Freedlander, Mark E.; Schuster, Scott E.; Alter, Jason P.; '[sthompson@barth-thompson.com](mailto:sthompson@barth-thompson.com)'  
**Cc:** Van Eaton, Josh (ENRD); Call, Gary (USAWVS); '[Eiseman.Robin@epa.gov](mailto:Eiseman.Robin@epa.gov)'; '[Gray.Heather@epa.gov](mailto:Gray.Heather@epa.gov)'  
**Subject:** RE: Freedom Industries

Jeffrey,

This hearing may be adjourned. We are going to agree to another extension of time to respond and will get back to you with a new hearing date.

Talk to you soon.

Mike

**From:** Kaiser, Charles J. [<mailto:CJKaiser@pgka.com>]  
**Sent:** Wednesday, February 05, 2014 3:53 PM  
**To:** Sands, Jeffrey (ENRD); Tenenbaum, Alan (ENRD); Kaiser, Jeff; Freedlander, Mark E.; Roeschenthaler, Michael J.; Schuster, Scott E.; Alter, Jason P.; '[sthompson@barth-thompson.com](mailto:sthompson@barth-thompson.com)'  
**Cc:** Van Eaton, Josh (ENRD); Call, Gary (USAWVS); '[Eiseman.Robin@epa.gov](mailto:Eiseman.Robin@epa.gov)'; '[Gray.Heather@epa.gov](mailto:Gray.Heather@epa.gov)'  
**Subject:** RE: Freedom Industries

Greetings: On behalf of the DIP Lender, we will agree to an extension of the time for filing objections to the DIP loan until the close of business tomorrow (i.e. 5:00 p.m. EST). CJK

**From:** Sands, Jeffrey (ENRD) [mailto:Jeffrey.Sands@usdoj.gov]  
**Sent:** Wednesday, February 05, 2014 1:55 PM  
**To:** Tenenbaum, Alan (ENRD); Kaiser, Charles J.; Kaiser, Jeff; 'MFreedlander@mcguirewoods.com'; 'MRoeschenthaler@mcguirewoods.com'; 'SSchuster@mcguirewoods.com'; 'jalter@mcguirewoods.com'; 'sthompson@barth-thompson.com'  
**Cc:** Van Eaton, Josh (ENRD); Call, Gary (USAWVS); 'Eiseman.Robin@epa.gov'; 'Gray.Heather@epa.gov'  
**Subject:** Re: Freedom Industries

Counsel:

In light of the pending objection deadline, please advise whether the Debtor and Lender agree to include the language proposed by the United States in the email below, or will agree to an extension of time for the objection deadline.

Thank you for your prompt attention to this matter.

Regards,  
Jeffrey K. Sands  
Senior Attorney  
Department of Justice  
Environmental Enforcement Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
(202) 514-3908 (work)  
(202) 532-3320 (cell)

Sent Using U.S. DOJ/ENRD BES 5 Server

**From:** Tenenbaum, Alan (ENRD)  
**Sent:** Tuesday, February 04, 2014 06:29 PM  
**To:** Kaiser, Charles J. <CJKaiser@pgka.com>; Kaiser, Jeff <jeffkaiser@pgka.com>; Freedlander, Mark E. <MFreedlander@mcguirewoods.com>; Roeschenthaler, Michael J. <MRoeschenthaler@mcguirewoods.com>; Schuster, Scott E. <SSchuster@mcguirewoods.com>; Alter, Jason P. <jalter@mcguirewoods.com>; sthompson@barth-thompson.com <sthompson@barth-thompson.com>  
**Cc:** Van Eaton, Josh (ENRD); Sands, Jeffrey (ENRD); Call, Gary (USAWVS); Eiseman, Robin <Eiseman.Robin@epa.gov>; Gray, Heather <Gray.Heather@epa.gov>  
**Subject:** Freedom Industries

Counsel:

Will the Debtor and Lender agree to the language below for inclusion in the Final



Order on financing? We have added one clarifying sentence to the language from the interim order in CAPS below but don't think it is controversial. Is there a proposed Final Order yet that we can review to make sure we don't have any other comments? We would appreciate your getting back to us quickly or agreeing to an extension of time for the deadline for objections. Thanks. Alan.

Alan Tenenbaum

National Bankruptcy Coordinator

Department of Justice

Environmental Enforcement Section

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Paragraph 21:

EXCEPT that this Paragraph shall apply to environmental liabilities only so long as the actions of the Lender, its agents, officers, directors, members, affiliates or lawyers do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a vessel or facility owned or operated by the Debtor, or otherwise cause lender liability to arise or the status of control, responsible person, owner, or operator to exist under applicable federal, state, or local law.

Paragraph 52:

Nothing in this Order or the DIP Agreement or Loan Documents shall relieve the Debtor of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b). NOTHING IN THIS ORDER OR THE DIP AGREEMENT OR LOAN DOCUMENTS SHALL EXCUSE COMPLIANCE WITH ANY ORDER OF THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL

PROTECTION OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY TO ADDRESS PUBLIC HEALTH OR ENVIRONMENTAL THREATS. Nothing in this Order or the DIP Agreement or Loan Documents shall impair or adversely affect any claim of any governmental unit with respect to any insurance proceeds for liabilities under environmental laws to the extent not permitted by applicable law. As to the United States, any State or municipality and any of the foregoing's respective agencies, departments or agents, nothing in this Order or the DIP Agreement or Loan Documents shall discharge, release or otherwise preclude any valid right of setoff or recoupment that any such entity may have. Nothing in this Order or the DIP Agreement or Loan Documents impairs or adversely affects any right of a governmental unit under financial assurance instruments provided by the Debtor to comply with non-bankruptcy law. Except as provided above, all rights and defenses of the Debtor and its bankruptcy estate with respect to the foregoing reservations are reserved.